UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

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KARL BRECKON, Individiually and on Behalf of All Others Similiarly Situated Plaintiff, v. ENRON CORP. SAVINGS PLAN ADMINISTRATIVE COMMITTEE, JOHN DOES NOS. 1-100, JAMES S. PRENTICE, MARY K. JOYCE, and THE NORTHERN TRUST COMPANY Defendant.	**Civil Action No.** 502CV030 **Class Action Complaint**

CLASS ACTION COMPLAINT

Plaintiff, by his undersigned attorneys for his Class Action Complaint, alleges upon personal knowledge as to himself and his own acts, and upon information and belief (based upon the investigation of his counsel) as to all other matters, as to which allegations he believes substantial evidentiary support will exist after a reasonable opportunity for further investigation and discovery as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action as a Class Action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Enron Corp. Savings Plan (the "Savings Plan") and all persons who are or were participants or beneficiaries of the Savings Plan during the period from January 20, 1998 through November 28, 2001, inclusive. Excluded from the Class is any member of Enron's senior management.

2. Beginning on January 20, 1998, when Enron Corp. ("Enron") reported its financial results for the year ending December 31, 1997, the Company systematically misrepresented its reported financial results by entering into elaborate partnerships with related parties to obscure its actual poor financial results.

3. Throughout the Class Period, Enron reported "strong" or "record" financial results for each successive year through 2000, but those results were only attained through the use of accounting trickery.

4. Unaware of the improper accounting and financial reporting underway at Enron, the market price of Enron stock continued to rise – trading as high as $90.00 per share in December, 2000. Members of the Class, having no knowledge of the accounting improprieties, and further encouraged by the public statements of officers of Enron regarding the financial strength of the Company, as well as statements made by Defendants specifically to Savings Plan participants continued to add more Enron stock to their Savings Plan accounts at prices typically between $50 and $80 per share.

5. On October 16, 2001 Enron made its first disclosure that something was awry with its financial reporting. In this press release, Enron announced that it would be forced to take a $1 billion charge against its third quarter results related to impairment of certain of its assets including "certain structured finance arrangements." This surprising announcement called into question Enron's financial reporting system and would lead to further investigation into these "structured finance arrangements."

6. On October 17, 2001, Defendants "locked down" all assets in the Enron Corp. Savings Plan – including all of the participants' investments in Enron stock. Because of this maneuvering by Defendants, the participants were powerless to sell their shares of Enron.

7. From October 17, 2001 through November 7, 2001, numerous news stories questioned Enron's financial reporting, and detailed the complex (and possibly improper) nature of the "structured finance arrangements." During this period, it came to light that these arrangements were with purportedly "independent" partnerships that were, in fact, established and run by the Chief Financial Officer of Enron, Andrew S. Fastow. The press was highly critical of these arrangements and questioned both Fastow's credibility and Enron's financial reporting in light of Fastow's involvement in the partnerships. During this time period, Enron shares sank to close at $11.17 per share on November 5, 2001. But the Savings Plan participants – still subject to the "lock-down" of their retirement plan – remained powerless to sell their shares and avoid the continuing decline in Enron's share price.

8. On November 8, 2001, Enron was finally forced to announce that all of its reported financial results since its December 31, 1997 annual financial statements were materially false and misleading. <u>The Company announced the highly unusual step of restating of all of the Company's annual financial statements for the previous four years – essentially admitting that the statements were materially misleading when they were issued</u>.

9. The stock market reacted severely to Enron's disastrous news, causing Enron stock to fall below $9.00 per share immediately after the November 8, 2001 announcement, and to sink as low as $7.37 per share on November 20, 2001. The participants of the Savings Plan, still powerless to sell their Enron shares because of the "lock down," were forced to watch in dismay as their investment in Enron stock plummeted.

10. On November 19, 2001 – after Savings Plan participants had lost more than $800 million, the "lock-down" was lifted. Also on this date, Enron filed its Form 10-Q with the SEC for the quarter ended September 30, 2001. This Form 10-Q detailed the reasons for the restatement

announced on November 8, 2001, and offered restatements that varied materially from those announced on November 8, 2001. Following this disclosure, Enron's shares continued to slide, closing at $4.11 per share on November 27, 2001. The share price only remained that high because of the pending acquisition of Enron by Dynegy, Inc.

11. The Class Period closes on November 28, 2001, when Dynegy, Inc. announced that it would not complete the previously announced acquisition of Enron because it had learned that Enron's representations and warranties about its financial condition were inaccurate. Enron shares have sunk below $1.00 per share, and the Company has filed for bankruptcy protection. In all, participants of the Savings Plan have lost more than $1.3 billion during this melt-down of Enron.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. § 1132(e)(1) and personal jurisdiction over the Defendants pursuant to Fed R. Civ. P. 4.

13. Venue is properly laid in this district pursuant to the Employee Retirement Income Security ACT ("ERISA") § 502(e)(2) (29 U.S.C. § 1132(e)(2)) because the administration of the Savings Plan took place in this district, some or all of the fiduciary breaches for which relief is sought occurred in this district, and one or more of the Defendants may be found in this district.

PARTIES AND SIGNIFICANT NON-PARTY

A. Significant Non-Party

14. Enron Corp. ("Enron") is an Oregon corporation with its headquarters at 1400 Smith Street in Houston, Texas. At all relevant times, Enron was the Savings Plan sponsor and a fiduciary under ERISA (29 U.S.C. §§ 1002(16)(B) and 1002(21)(A)). Enron is also a party in interest pursuant to ERISA within the meaning of 29 U.S.C. § 1002(14). Enron is not named as a defendant because it filed for protection under Chapter 11 of the bankruptcy code on December 2, 2001.

B. Parties

15. Plaintiff Karl Breckon is a resident of Texas. Plaintiff is a participant of the Enron Corp. Savings Plan.

16. Defendant Enron Corp. Savings Plan Administrative Committee (the "Administrative Committee") was and is the "named fiduciary," a fiduciary and administrator of the Savings Plan within the meaning of 29 U.S.C. § 1002(21)(A). The Administrative Committee's principal place of business is the same as Enron's at 1400 Smith Street, Houston, Texas 77002.

17. Defendant John Does Nos. 1-100 ("Does") were at all relevant times members of the Administrative Committee. As such, they were also Savings Plan fiduciaries within the meaning of ERISA (29 U.S.C. § 1002(21)(A)).

18. Defendant James S. Prentice ("Prentice") was and is Chairman of the Administrative Committee. As such, he was also a fiduciary of the Savings Plan within the meaning of ERISA (29 U.S.C. § 1002(21)(A)).

19. Defendant Mary K. Joyce ("Joyce") was vice-president of Compensation and Benefits for Enron. Defendant Joyce was also a member of the Administrative Committee. Defendant Joyce signed the Savings Plan's Internal Revenue Service Form 5500 for the year ending December 31, 1998 in her capacity as both Plan sponsor and a Plan administrator. As such, she was also a fiduciary of the Savings Plan within the meaning of ERISA (29 U.S.C. § 1002(21)(A)).

20. The Defendants identified above in paragraphs 16-19 are sometimes herein collectively referred to as the "Enron Defendants." The Enron Defendants were fiduciaries with respect to the Savings Plan in that they each exercised control respecting management of the Savings Plan's assets, rendered investment advice for a fee or other compensation or had authority to do so,

and had discretionary authority or responsibility in the administration of the Savings Plan. 29 U.S.C. § 1002(21)(A).

21. Defendant The Northern Trust Company ("Northern Trust") is a multi-bank holding company headquartered in Chicago with approximately $35 billion in banking assets and over $1.6 trillion in trust assets. Northern Trust's assets under management are over $300 billion, ranking Northern Trust among the 20 largest U.S. money managers. Over two-thirds of corporate revenue is derived from fees, the majority of which are from fiduciary, asset custody, and investment management services. Northern Trust was a fiduciary of the Savings Plan within the meaning of ERISA (29 U.S.C. § 1002(21)(A)).

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action as a Class Action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Enron Corp. Savings Plan (the "Savings Plan") and all persons who are or were participants or beneficiaries of the Savings Plan during the period from January 20, 1998 through November 28, 2001. Excluded from the Class is any member of Enron's senior management.

23. The Class consists of thousands of persons located throughout the United States, thus, the members of the Class are so numerous that joinder of all Class members in impracticable. The exact number of Class members is not presently known to plaintiffs, but can readily be determined by appropriate discovery.

24. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class actions and ERISA litigation. Plaintiffs has no interests that are adverse or antagonistic to those of the Class.

25. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by many individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to individually seek redress for the wrongful conduct alleged herein.

26. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether ERISA was violated by Defendants' acts and omissions, as alleged herein;

(b) Whether Defendants breached fiduciary duties owed to plaintiffs and the members of the Class by failing to act prudently and solely in the interest of the Enron Corp. Savings Plan participants and beneficiaries; and

(c) Whether plaintiffs and the members of the Class have sustained injury by reason of Defendant's actions and omissions.

(d) Plaintiffs envision no difficulty in the management of this litigation as a Class Action.

THE ENRON CORP. SAVINGS PLAN

27. The Enron Corp. Savings Plan (the "Savings Plan") was an eligible individual account Plan within the meaning of ERISA § 407 (29 U.S.C. § 1107) and was also a qualified cash or deferred arrangement within the meaning of IRC § 401(k) (26 U.S.C. § 401(k)).

A. Participant Contributions

28. Participants in the Savings Plan may contribute from 1% to 15% of their eligible base pay in any combination of before-tax salary deferrals or after-tax contributions subject to certain

limits prescribed by the Code. Participants may also roll over amounts representing distributions from other qualified Plans. During 2000, participants in the Savings Plan transferred approximately $56 million as direct rollovers from the Enron Corp. Employee Stock Ownership Plan (the "ESOP") to the Savings Plan.

B. Company Contributions

29. Enron matches 50% of all participant before-tax contributions, with the exception of field hourly construction workers and certain of Portland General Electric's ("Portland General" -- a subsidiary of Enron) eligible bargaining unit employees, up to a maximum of 6% of base pay. Portland General eligible bargaining unit employees who were born before 1957 and were employed before January 1, 1999 may participate in either retirement program A or B, while bargaining unit employees employed after January 1, 1999 may participate in program B only. For those participants in program A, the Company matches 100% of before-tax contributions up to a maximum of 6% of eligible base pay. For those participants in program B, the Company matches 100% of before-tax contributions in excess of 5%, but not in excess of 10% of eligible base pay, and the Company contributes an additional 5% of base pay. Company contributions are not made for field hourly construction workers.

30. All Company contributions, except the additional 5% contribution for Portland General participants in retirement program B, are invested in the Enron Corp. Stock Fund, which consists entirely of Enron stock. This is beneficial to Enron because a large number of Enron shares may be voted according to management's discretion. At age 50, participants may elect to reallocate their Company contributions among the other investment options.

C. Vesting

31. Participants are immediately 100% vested in their voluntary contributions plus actual earnings thereon. Eligible employees hired prior to July 1, 1999 are 100% vested in their Company contributions and actual earnings thereon. Eligible employees hired on or after July 1, 1999 become 100% vested in their Company contributions after completing one year of service. Participants automatically become 100% vested regardless of length of service i) upon reaching age 65; ii) becoming totally and permanently disabled; or iii) upon death while an employee. Forfeited amounts of nonvested accounts are used to reduce future Company matching contributions or administrative expenses of the Savings Plan.

D. Investment Options

32. At all relevant times, the participants and beneficiaries of the Savings Plan were presented with alternative investments represented to them as suitable for their retirement contributions. At all relevant times, one of the alternative investments presented to the participants and beneficiaries of the Savings Plan was the common stock of Enron.

FACTUAL ALLEGATIONS

A. Background Information

33. Enron provides products and services related to natural gas, electricity and communications to wholesale and retail customers. Enron's operations are conducted through its subsidiaries and affiliates, which are principally engaged in: the transportation of natural gas through pipelines to markets throughout the United States; the generation, transmission and distribution of electricity to markets in the northwestern United States; the marketing of natural gas, electricity and other commodities and related risk management and finance services worldwide; the development, construction and operation of power Plants, pipelines and other energy related assets worldwide; the

delivery and management of energy commodities and capabilities to end-use retail customers in the industrial and commercial business sectors; and the development of an intelligent network platform to provide bandwidth management services and the delivery of high bandwidth communication applications.

34. Prior to 1997, Enron's stock was relatively stable, as it was seen primarily as an energy producing company focused primarily on natural gas. Enron began a diversification program in 1997 that included making acquisitions and entering new businesses.

35. As the diversification program continued throughout 1997, 1998, 1999, 2000 and most of 2001, Enron's share price rose significantly in response to the Company's promotion of its new business opportunities and its public reports of extremely favorable and dramatically increasing financial results. By April of 2001, Enron was ranked as the seventh largest company in the U.S. based on revenues in the annual list of "Fortune 500" companies. Enron's share price rose to as high as $83 per share in December of 2000. But these huge revenues and excellent reported financial results were only generated through the use of accounting trickery that would unravel in November of 2001, as described more fully below.

B. Enron's False and Misleading Financial Results are Reported to an Unsuspecting Market, and Plan Beneficiaries in Particular

36. On January 20, 1998, Enron announced its operating results for the year ended December 31, 1997 over the PR Newswire. The Company reported net income of $105 million for the year ($0.32 per share). Enron's Chairman and CEO, Kenneth Lay, commented that "[o]ur 1997 results reflected extremely strong operating performance in all of our business units, offset to a significant degree by a number of non-recurring charges . . . These charges allow us to clear the decks for future growth." This press release was false and misleading when made because the net

income figures disseminated by Enron were materially overstated and were not prepared in accordance with Generally Accepted Accounting Standards ("GAAP"), as detailed more fully in Section VI(E) of this Complaint, *infra.*

37. On March 31, 1998, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 20, 1998 press release, and was false and misleading for the same reasons.

38. On January 19, 1999, Enron issued a press release over the PR Newswire announcing its earnings for the year ended December 31, 1998:

> Enron Corp. (NYSE: ENE) announced today a 16 percent increase in 1998 earnings per diluted share to $2.01 from $1.74 in 1997. Corresponding net income increased 36 percent to $698 million from $515 million during the year.
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> * * *
>
> "Across Enron, 1998 was an excellent year," said Kenneth L. Lay, Enron Corp. chairman and chief executive officer.

This press release was false and misleading when made because the net income figures disseminated by Enron were materially overstated and were not prepared in accordance with Generally Accepted Accounting Standards ("GAAP"), as detailed more fully in Section VI(E) of this Complaint, *infra.*

39. On March 31, 1999, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 19, 1999 press release, and was false and misleading for the same reasons. Further, the assets and shareholders' equity figures were materially overstated and the amount of debt carried by Enron materially understated, as detailed more fully in Section VI(E) of this Complaint, *infra.*

40. On January 18, 2000, Enron issued a press release over the PR Newswire announcing its earnings for the year ended December 31, 1999:

> HEADLINE: Enron Continues Strong Earnings Growth; Reports Fourth Quarter 1999 Earnings of $0.31 Per Diluted Share
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> DATELINE: HOUSTON, Jan. 18
> BODY:
>
> Enron Corp. (NYSE: ENE) announced today very strong financial and operating results for the full year 1999, including:
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> - a 28 percent increase in revenues to $40 billion;
> - a 37 percent increase in net income to $957 million;
> - an 18 percent increase in earnings per diluted share to $1.18

This press release was false and misleading when made because the net income figures disseminated by Enron were materially overstated and were not prepared in accordance with GAAP, as detailed more fully in Section VI(E) of this Complaint, *infra.*

41. On March 30, 2000, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 18, 2000 press release, and was false and misleading for the same reasons. Further, the assets and shareholders' equity figures were materially overstated and the amount of debt carried by Enron materially understated, as detailed more fully in Section VI(E) of this Complaint, *infra.*

42. On January 22, 2001, Enron issued a press release over the PR Newswire announcing "record" earnings for the year ended December 31, 2000:

> Enron Corp. (NYSE: ENE) announced today record financial and operating results for the full year 2000, including:
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> - a 25 percent increase in earnings per diluted share to $1.47;
> - a 32 percent increase in net income to $1.3 billion;
>
> * * *
>
> "Our strong results reflect breakout performances in all of our operations," said Kenneth L. Lay, Enron's chairman and CEO.

This press release was false and misleading when made because the net income figures disseminated by Enron were materially overstated and were not prepared in accordance with GAAP, as detailed more fully in Section VI(E) of this Complaint, *infra*.

43. On April 2, 2001, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 22, 2001 press release, and was false and misleading for the same reasons. Further, the assets and shareholders' equity figures were materially overstated and the amount of debt carried by Enron materially understated, as detailed more fully in Section VI(E) of this Complaint, *infra*.

44. On April 17, 2001, Enron issued a press release over the PR Newswire announcing "record" financial results and "increasing earnings expectations for 2001:"

> HEADLINE: Enron Reports Record First Quarter Recurring Earnings of $0.47 Per Diluted Share; Increases Earnings Expectations For 2001
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> DATELINE: HOUSTON, April 17
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> BODY: Enron Corp. announced today an 18 percent increase in diluted earnings per share to $0.47 for the first quarter of 2001 from $0.40 a year ago. Results for the quarter include:
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> * a 281 percent increase in revenues to $50.1 billion;
> * a 20 percent increase in net income to $406 million;
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> * * *
>
> "Enron's wholesale business continues to generate outstanding results. Transaction and volume growth are translating into increased profitability," said Jeff Skilling, Enron's president and CEO. "In addition, our retail energy services and broadband intermediation activities are rapidly accelerating."

But these "record" financial results were materially overstated and were not prepared in accordance with GAAP, as detailed more fully in Section VI(E) of this Complaint, *infra*.

45. On July 12, 2001, Enron issued a press release over the PR Newswire announcing excellent financial results, and predicting even better results in the rest of 2001 and 2002:

> HEADLINE: Enron Reports Second Quarter Earnings of $0.45 Per Diluted Share; Confirms 2001 EPS Estimate of $1.80 and Announces 2002 Target

DATELINE: HOUSTON, July 12

BODY: Enron Corp. announced today a 32 percent increase in diluted earnings per share to $0.45 for the second quarter of 2001 from $0.34 a year ago.

* * *

"Enron completed another quarter of exceptional performance. Our wholesale and retail energy businesses continue to dramatically expand business activity and increase profitability. In addition, Enron is distinct in developing a leading role in the European energy markets and in other high potential wholesale markets," said Jeff Skilling, Enron president and CEO.

* * *

Enron also announced both confidence in achieving $1.80 of recurring earnings per diluted share for the full year 2001 and new guidance for 2002 of $2.15 per diluted share.

But these financial results were materially overstated and were not prepared in accordance with GAAP, as detailed more in Section VI(E) of this Complaint, *infra*. Additionally, the projections of future profitability were based on an extension of the current financial results, which Enron knew were materially false and misleading and not prepared in accordance with GAAP or SEC regulations.

46. In addition to the above referenced disclosures, Enron and certain of its senior management participated in writing and disseminating to Savings Plan beneficiaries numerous e-mails and articles in an in-house publication entitled *Enron Business* that reiterated the above referenced financial results and hyped Enron's future prospects. In one recent issue of *Enron Business*, Enron CEO Kenneth Lay expressed confidence that Enron's stock price would rise in the near term. These promotional statements were made to encourage Savings Plan participants to invest in Enron stock, and to discourage them from liquidating the amounts they already had invested in Enron stock. This was done because the shares owned indirectly by the Savings Plan through its investment in the Enron Corp. Stock Plan consisted of a large block of stock that would always be voted in accordance with Enron's management's wishes. Additionally, participants of the Savings

Plan purchased large amounts of stock which created extra demand and thus helped increase the market price for Enron stock.

47. In large part because of the Enron Defendants' efforts to influence the Savings Plan participants, as of January 1, 2001, these participants had invested more than $1.3 billion – more than 62% of the total asset value of all investments in the Savings Plan – in Enron stock.

48. On October 15, 2001, Enron Stock closed trading at $33.84 per share.

C. Bad News Begins to Emerge Regarding Enron's True Financial Condition

49. On October 16, 2001, Enron issued a press release over the PR Newswire announcing its operating results for the quarter ending September 30, 2001, and shocking the market and Savings Plan participants by announcing that it would be forced to take a non-recurring charge against earnings of more than $1 Billion against its third quarter earnings -- which would force net income to an appalling loss of $618 million for the quarter. Enron detailed this surprising charge as follows:

> Enron's results in the third quarter of 2001 include after-tax non-recurring charges of $ 1.01 billion, or $ (1.11) per diluted share, consisting of:
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> - $ 287 million related to asset impairments recorded by Azurix Corp. These impairments primarily reflect Azurix's Planned disposition of its North American and certain South American service-related businesses;
>
> - $ 180 million associated with the restructuring of Broadband Services, including severance costs, loss on the sale of inventory and an impairment to reflect the reduced value of Enron's content services business; and
>
> - $ 544 million related to losses associated with certain investments, principally Enron's interest in The New Power Company, broadband and technology investments, and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

50. On October 17, 2001, before the market re-opened following this shocking news, Defendants "locked-down" the Savings Plan accounts, making it impossible for the participants to roll their investments in Enron stock into other investments. Essentially, members of the Class were

forced by Defendants to watch from the sidelines as their hard-earned retirement savings evaporated as a result of Enron's financial misconduct.

51. An article in the Wall Street Journal on October 17, 2001 further explained the nature of the "certain structured finance arrangements" alluded to in the October 16, 2001 press release as a labyrinth of complex partnership arrangements designed to keep certain losses off of Enron's books by exploiting perceived loopholes in accounting requirements. Shockingly, many of these partnerships were managed by Enron's Chief Financial Officer Andrew S. Fastow ("Fastow"). The article outlined some of the problem arrangements as follows:

> The two partnerships, LJM Cayman LP and the much larger LJM2 Co-Investment LP, have engaged in billions of dollars of complex hedging transactions with Enron involving company assets and millions of shares of Enron stock. It isn't clear from Enron filings with the Securities and Exchange Commission what Enron received in return for providing these assets and shares. In a number of transactions, notes receivable were provided by partnership-related entities.

52. On October 18, 2001, the Wall Street Journal elaborated on the nature of Fastow's financial arrangements in these complex partnership arrangements. This article reported that Enron "shrank its shareholder equity by $1.2 billion as the Company decided to repurchase 55 million of its shares that it had issued as part of a series of complex transactions with an investment vehicle" connected with Fastow. In response to the questions raised by these elaborate transactions and Enron's financial reporting in general, Enron's shares slid to close trading at $29.00 per share on October 18, 2001 on heavy trading volume.

53. These disclosures were troubling, to say the least, and the market continued to place downward pressure on the price of Enron stock with all the uncertainties raised by these complex accounting issues and questionable conduct by Enron's senior officers. The market forced the price of Enron stock lower during this period to close at $11.17 on November 5, 2001. Savings Plan participants were still "locked out" from trading in their accounts.

54. On November 8, 2001, the "other shoe" finally dropped when Enron filed a Form 8-K with the SEC disclosing that its financial reporting with regard to these complex transactions was

not in accordance with Generally Accepted Accounting Principles ("GAAP") and SEC regulations and that "the previously-issued financial statements for these periods and the audit reports covering the year-end financial statements for 1997 through 2000 should not be relied upon." Enron further announced that it would be forced to restate each of its annual financial statements since the annual financial statements for the year ended December 31, 1997:

> Enron's current assessment indicates that the restatement will include a reduction to reported net income of approximately $96 million in 1997, $113 million in 1998, $250 million in 1999 and $132 million in 2000, increases of $17 million for the first quarter of 2001 and $5 million for the second quarter and a reduction of $17 million for the third quarter of 2001.

Enron attributed the restatement to three reasons:

> To (1) reflect its conclusion that three previously unconsolidated entities did not meet certain accounting requirements and should have been included in Enron's consolidated financial statements, (2) reflect an adjustment to shareholders' equity described below and (3) include prior-year proposed audit adjustments and reclassifications (which were previously determined to be immaterial in the years originally proposed). Specifically, Enron has concluded that based on a review of related party transactions:
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> - The financial activities of Chewco Investments, L.P. (Chewco), a related party which was an investor in Joint Energy Development Investments Limited Partnership (JEDI), should have been consolidated into Enron's consolidated financial statements beginning in November 1997;
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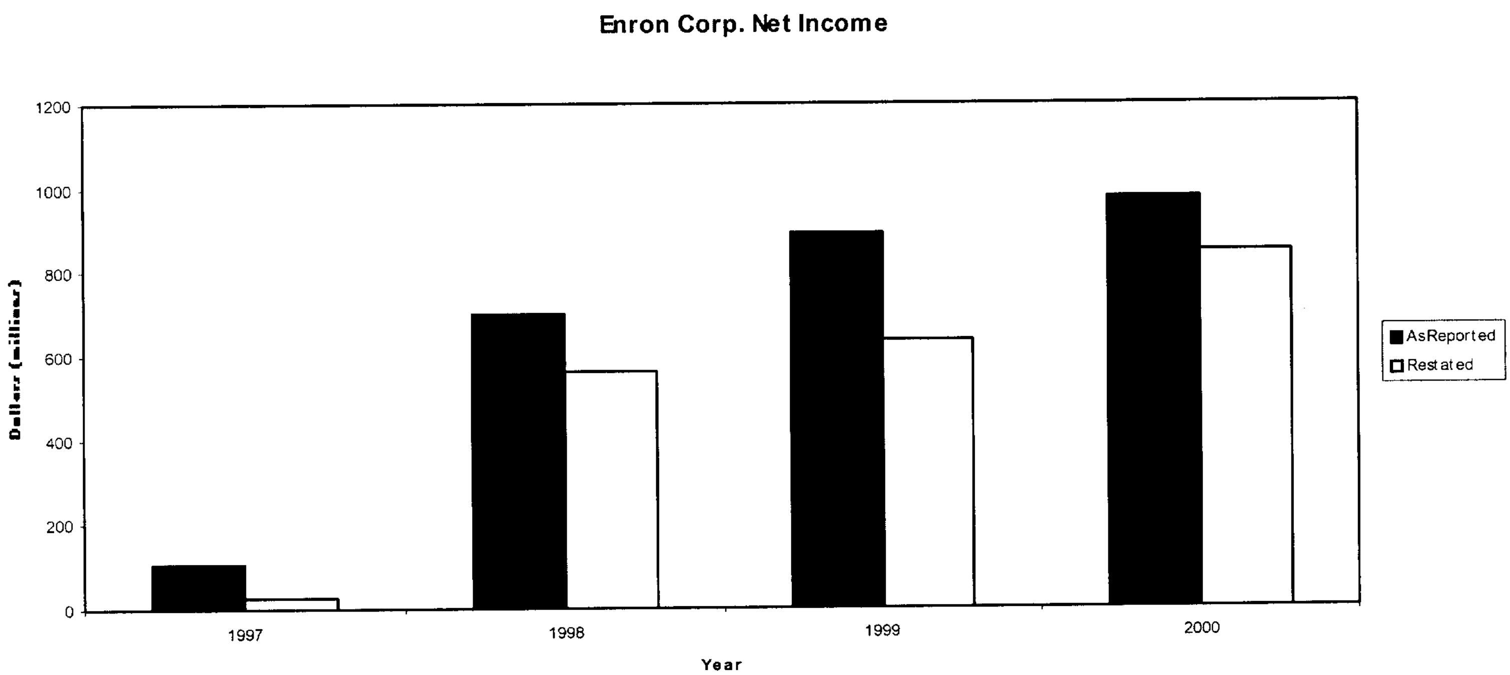
> - The financial activities of JEDI, in which Enron was an investor and which were consolidated into Enron's financial statements beginning in the first quarter of 2001, should have been consolidated beginning in November 1997; and
>
> - The financial activities of a wholly-owned subsidiary of LJM Cayman, L.P. (LJM1), a private investment limited partnership for which the general partner's managing member was Andrew S. Fastow, former Executive Vice President and Chief Financial Officer of Enron, should have been consolidated into Enron's consolidated financial statements beginning in 1999.

This shocking news caused Enron's share price to collapse to under $9.00, and to continue to fall as low as $7.40 on November 20, 2001-- a loss of more than 90% from the class period high of $90.00 per share. Plaintiffs and the Class lost millions of dollars as a result of Defendants' misconduct. The size and scope of the restatements were shocking and unprecedented. Net income for each of the years from 1997 through 2000 was revised downward by as much as 75.2%, as shown by the following chart:

55. On November 19, 2001, Defendants ended their illicit "lock-down" of the Savings Plan. But by this time, Enron stock had sunk to close at $9.06 per share.

55. Also on November 19, 2001, Enron filed its quarterly report on Form 10-Q for the



period ending September 30, 2001 with the SEC. This Form 10-Q fully outlined the amount of the required restatements of Enron's 1997 through 2000 financial statements, and shed some light on the reasons that the restatement was required. It is interesting to note that the restated financial statements included in this Form 10-Q differed materially from the restatements announced on November 8, 2001. Following this disclosure, Enron's share price continued to sink, closing at $4.11 per share on November 27, 2001. The share price only remained that high because of the previous disclosure that Dynegy, Inc. ("Dynegy") would buy Enron at its already dramatically reduced share price.

56. On November 28, 2001, Dynegy announced over the Business Wire that it was abandoning its previously announced merger of Enron because of Enron's false representations about its financial condition:

> The company cited Enron's breaches of representations, warranties, covenants and agreements in the merger agreement, including the material adverse change provision.

Without the possibility of an acquisition to keep its share price artificially high, Enron shares sunk to close at just $0.61 per share – a shocking decline of more than 99% from its highs in December of 2000. The Company faces a near-certain bankruptcy, and the prospect that the Savings Plan participants will lose their entire investments in Enron stock. In all, the Savings Plan participants have lost more than $1.2 billion from Defendants breaches of their fiduciary duties.

D. Enron's Use Special Purpose Entities ("SPE") to Enhance Its Financial Statements in Violation of Accounting Principles and Regulations Led to the Restatements

57. Beginning in approximately 1997, Enron began to form several SPEs – some of which were managed by its senior officers. Certain of these SPEs were substantively owned or controlled by Enron, and were thus required to be included in Enron's financial results, but were not. In at least the following instances, SPEs that should have been included in Enron's reported financial results were excluded under the guise of being "unrelated" entities:

1. LJM Cayman, L.P. ("LJM1") and LJM2 Co-Investment, L.P. ("LJM2")

58. LJM Cayman, L.P. ("LJM1") and LJM2 Co-Investment, L.P. ("LJM2") are private investment partnerships that were formed in 1999. Andrew S. Fastow ("Fastow" – the Chief

Financial Officer of Enron until October 2001) was (from inception through July 2001) the managing member of the general partners of LJM1 and LJM2. Enron has admitted that Fastow received in excess of $30 million from his LJM management and investment activities.

59. From June 1999 through September 2001, Enron and Enron-related entities entered into 24 business relationships in which LJM1 or LJM2 participated. These relationships were of several general types, including: (1) sales of assets by Enron to LJM2 and by LJM2 to Enron; (2) purchases of debt or equity interests by LJM1 or LJM2 in Enron-sponsored SPEs; (3) purchases of debt or equity interests by LJM1 or LJM2 in Enron affiliates or other entities in which Enron was an investor; (4) purchases of equity investments by LJM1 or LJM2 in SPEs designed to mitigate market risk in Enron's investments; (5) the sale of a call option and a put option by LJM2 on physical assets; and (6) a subordinated loan to LJM2 from an Enron affiliate.

60. In many cases, these business relationships resulted in material losses or reductions to shareholders' equity to Enron, but those losses and reductions were not included in Enron's consolidated financial results.

2. Chewco Investments, L.P.

61. From December 1997 to December 2000, Chewco Investments, L.P. ("Chewco") received distributions of $433 million from Joint Energy Developments Limited Partnership ("JEDI"). Among other things, Chewco used a portion of these distributions to make repayments on its JEDI loan and to repay an additional borrowing from the third-party financial institution.

62. An Enron officer, Michael J. Kopper, was an investor in the general partner of Chewco and, at the time of the purchase, also was the manager of the Chewco general partner.

3. Joint Energy Developments Limited Partnership ("JEDI")

63. From June 1993 through November 1997, an Enron subsidiary was the general partner of JEDI and a third-party, the California Public Employees' Retirement System (CalPERS), was the limited partner. In November 1997, JEDI made a liquidating distribution to CalPERS of $383 million. Concurrently, Chewco purchased a limited partnership interest in JEDI for $383

million, $132 million of which was financed by an interest-bearing loan from JEDI to Chewco, and $240 million of which was borrowed from a third-party financial institution (supported by a guarantee from Enron). The balance of the transaction (approximately $12 million) was principally funded by a contribution from a third party. Enron has subsequently determined that a portion of this contribution was cash collateralized.

64. In March 2001, Enron purchased Chewco's limited partnership interest in JEDI for $35 million. In September 2001, Enron paid an additional $2.6 million to Chewco in connection with a tax indemnification agreement between JEDI, Chewco and Enron. Of the total purchase consideration, $26 million was used by Chewco to make a payment on the JEDI loan. Chewco currently has an outstanding balance due on the JEDI loan of $15 million.

E. Enron's Financial Statements From December 31, 1997 Through June 30, 2001 Were Materially False and Misleading and Violated GAAP and SEC Regulations

65. In order to inflate Enron's revenues, earnings and assets improperly during the Class Period, Enron: (i) failed to consolidate the results of the SPEs into Enron's financial statements thereby failing to include hundreds of millions of dollars of losses and debt from Enron's financial statements; (ii) failed to disclose related party transactions; (iii) improperly accounted for common stock issued to a related entity; and (iv) failed to record an aggregate of $478 million in proposed audit adjustments from 1997 through 2000 on the grounds that they were "immaterial."

66. Enron has now admitted that its financial reporting from 1997 through June 2001 was materially false and misleading when the statements were issued. The size and scope of the accounting restatements are enormous and unprecedented for a company of Enron's size:

Enron Corp. Restatements

Net Income

	Net Income as Reported	Net Income Restated	Change (Dollars)	Change (Percentage)
1997	$105,000,000	$ 26,000,000	$(79,000,000)	-75.2%
1998	703,000,000	564,000,000	(139,000,000)	-19.7%
1999	893,000,000	635,000,000	(258,000,000)	-28.9%
2000	979,000,000	842,000,000	(137,000,000)	-14.0%

Earnings Per Share

	E.P.S. as Reported	E.P.S. Restated	Change (Dollars)	Change (Percentage)
1997	$0.16	$0.02	$(0.14)	-75.2%
1998	1.01	0.82	(0.19)	-19.7%
1999	1.10	0.78	(0.32)	-28.9%
2000	1.12	0.97	(0.15)	-14.0%

Total Assets

	Total Assets as Reported	Total Assets Restated	Change
1997	$22,552,000,000	$22,924,000,000	$372,000,000
1998	29,350,000,000	29,442,000,000	92,000,000
1999	33,381,000,000	33,272,000,000	(109,000,000)
2000	65,503,000,000	64,926,000,000	(577,000,000)

Total Debt

	Total Debt as Reported	Total Debt Restated	Change
1997	$6,254,000,000	$6,965,000,000	$711,000,000
1998	7,357,000,000	7,918,000,000	561,000,000
1999	8,152,000,000	8,837,000,000	685,000,000
2000	10,229,000,000	10,857,000,000	628,000,000

Total Equity

	Total Equity as Reported	Total Equity Restated	Change
1997	$5,618,000,000	$5,309,000,000	$(309,000,000)
1998	7,048,000,000	6,600,000,000	(448,000,000)
1999	9,570,000,000	8,724,000,000	(846,000,000)
2000	11,470,000,000	10,289,000,000	(1,181,000,000)

67. These improper accounting practices and manipulations were in direct violation of Generally Accepted Accounting Principles ("GAAP") and SEC rules, as described below, and resulted in materially overstated revenues from total revenues, net income and net assets of the fiscal year ended December 31, 1997 and all subsequent quarterly and annual financial statements through June 30, 2001.

68. GAAP is the set of conventions, rules and procedures which constitute the professional standards of the accounting profession. Regulation S-X (17 C.F.R. § 210.4-01(a)(1)) provides that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading or inaccurate. Financial Accounting Standards ("FAS") are promulgated by the Financial Accounting Standards Board ("FASB") and, along with SEC rules and

releases, opinions of the Accounting Principles Board ("APB") and Accounting Research Bulletins ("ARB's") issued by the American Institute of Certified Public Accountants are considered to be the highest authorities of GAAP. Emerging Issues Task Force positions ("EITF") of the Financial Accounting Standards Board are a lower level authority of GAAP.

1. Failure to Consolidate the Results of Related Entities into Enron's Financial Statements

69. Enron did not consolidate the results of several related SPEs which were, at all times, under the control of Enron. By excluding the SPEs from their results of operations, Enron avoided recognition of huge losses suffered by these entities, thereby causing earnings to be materially overstated. Enron also avoided having to reduce net assets, increase the amount of debt on its balance sheet and reduce shareholders' equity by more than one billion dollars by the year 2000.

70. The relevant provision of GAAP concerning consolidations or combinations of related companies is ARB 51 ¶1 which provides that related party must be consolidated if one party establishes "control" over the other:

> there is a presumption that consolidated statements are more meaningful than separate statements and that they are necessary for a fair presentation when one of the enterprises in the group directly or indirectly has a controlling financial interest in the other enterprises.

The concept of "control" is applied broadly under GAAP and in a manner to emphasize the economic substance of the transaction, rather than a strict adherence to technical form, as described in APB Statement No. 4:

> Financial accounting emphasizes the economic substance of events even though their legal form may differ from the economic substance and suggest different treatment.

[1] Consolidated Financial Statements, Accounting Research Bulletin No. 51.

71. "Control" is similarly defined by SEC regulations as "the possession, direct or indirect, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise." Regulation S-X (17 C.F.R. § 201.1-02(g)). Regulation S-X further recognizes that "control" may encompass situations other than strict technical ownership:

> In other situations, consolidation of an entity, notwithstanding the lack of technical majority ownership, is necessary to present fairly the financial position and results of operations of the registrant, because of the existence of a parent-subsidiary relationship by means other than record ownership of voting stock. 17 C.F.R. § 201.3A-02(a).

72. A company (Enron) whose Chief Financial Officer (Fastow) is the "managing member of the general partner" of a partnership plainly exercises "control" over that general partnership GAAP and applicable SEC regulations. *See* Section VI(D) of this Complaint, *supra*. Accordingly, LJM1 and LJM2 were required to be consolidated into Enron's financial statements.

73. As described in Section VI(D), *supra*, Chewco was formed in 1997 and was run by Michael Kopper, a managing director of Enron's Global Equity Markets Group. JEDI was a partnership which was controlled by Chewco, and was thus also under the control of Enron. Accordingly, both Chewco and JEDI were required to be consolidated into Enron's financial results.

74. Although the results of LJM1, LJM2, Chewco and JEDI were required to be included in Enron's reported financial results for the reporting periods from December 31, 1997 through December 31, 2000, they were not -- resulting in an overstatement of net income in the following amounts:

	1997	1998	1999	2000
JEDI and Chewco	$28,000,000	$133,000,000	$153,000,000	$91,000,000
LJM1 and LJM2	-	-	95,000,000	8,000,000

75. In addition, failing to consolidate these SPEs into Enron's financial results caused Enron's shareholders' equity to be materially overstated in the following amounts:

	1997	1998	1999	2000
JEDI and Chewco	$258,000,000	$391,000,000	$544,000,000	$814,000,000
LJM1 and LJM2	-	-	166,000,000	(60,000,000)

76. Failing to consolidate the SPEs in Enron's financial statements caused the financial statements of Enron to be materially misstated in violation of GAAP. Thus, by reporting the financial condition and results of operations for the SPEs separately from Enron, the financial statements of Enron were free from significant operating losses, debt and related interest expense reflected only on the non-public financial statements of the SPEs. The debt and related interest expense reported by the SPEs was debt and interest incurred on a consolidated basis with Enron and should have been reported on the financial statements of Enron.

77. GAAP, as set forth in Accounting Research Bulletin ("ARB") No. 51 and as amended by FASB Statement of Financial Accounting Standards ("SFAS") No. 94, requires consolidation of all majority-owned subsidiaries unless control is temporary or does not rest with the majority owner. ARB No. 51 ¶1 states in part:

> There is a presumption that consolidated statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one of the companies in the group directly or indirectly has a controlling financial interest in other companies.

78. GAAP provides that certain qualifying Special Purpose Entities ("SPE") do not have to be consolidated. SFAS No. 125 sets forth criteria for a qualifying SPE that must be met, including that it is a legal entity whose activities are limited by legal documents establishing the SPE to: (i) hold title to transferred assets; (ii) issue beneficial interests; (iii) collect cash proceeds from the assets and reinvest or distribute to holders of interests; and (iv) distribute proceeds to holders; and also it, the SPE, must have standing apart from the transferor. SFAS No. 125 ¶26. See also FASB Emerging Issues Task Force Abstracts ("EITF") No. 84-30; 96-20; and 96-21 and various other technical issues related to SPEs in Appendix D to the EITF.

79. Had Enron properly consolidated the financial statements of the partnerships, as they were required to do under GAAP, the partnership's obligations to Enron would have been properly

reflected on the financial statements of Enron. Enron's improper accounting methodology with respect to these partnerships had the effect of artificially inflating the financial statements of Enron for the fiscal years ended December 31, 1997 through December 31, 2000 and for all quarters from December 31, 1997 through June 30, 2001.

2. Failure to Disclose Related Party Transactions

80. Even if Enron were not required to consolidate its operation with the franchisees for financial reporting purposes, Enron's financial statements during the period from December 31, 1997 through June 30, 2001, were materially false and misleading in that they failed to disclose adequately related party transactions with the SPEs, as required by GAAP. The relevant accounting standard addressing this topic is FAS 57, which requires sufficient detail to allow the reader of the financial statements to be able to fully understand the effects of the related party transaction on the financial statements. This provision states, in pertinent part:

> Financial statements shall include disclose of material related party transactions. . . . These disclosures shall include:
>
> a. The nature of the relationship(s) involved;
>
> b. A description of the transactions, including transactions to which no amounts or nominal amounts were ascribed, for each of the periods for which income statements are presented, and such other information deemed necessary to an understanding of the effects of the transactions on the financial statements;
>
> c. The dollar amounts of transactions for each of the periods for which income statements are presented and the effects of any change in the method of establishing the terms from that used in the preceding period;
>
> d. Amounts due from or to related parties as of the date of each balance sheet presented and, if not otherwise apparent, the terms and manner of settlement.

81. The existence of the large investment in the SPE's, clearly constitutes a related party relationship, as defined by FAS 57, which states:

> **Related Parties.** Affiliates of the enterprise, entities for which investments are accounted for by the equity method by the enterprise; trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management; principal owners of the enterprise; its management; members of the immediate families of principal owners of the enterprise and its management; <u>and other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests</u>. Another party also is related party if it can significantly influence the management or operating policies of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

Similarly, Regulation S-X (17 C.F.R. § 210.1-02(g)) defines "control" as "the possession, direct or indirectly, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise." Regulation S-X further recognizes that "control" may encompass situations other than strict technical ownership:

> In other situations, consolidation of an entity, notwithstanding the lack of technical majority ownership, is necessary to present fairly the financial position and results of operations of the registrant, because of the existence of a parent-subsidiary relationship by means other than record ownership of voting stock. 17 C.F.R. § 201.3A-02(a).

As described above, Enron plainly exerted "control" or "significant influence" over LJM1, LJM2, Chewco and JEDI which triggers the disclosure requirements of FAS 57. But despite this clear provisions of GAAP, Enron completely failed to disclose any such information in any of its financial statements during the period from December 31, 1997 through June 30, 2001. The undisclosed related party transactions were plainly a material amount in relation to Enron's reported financial results.

3. Enron's Improper Accounting For Certain Common Stock Issued

82. EITF 85-1, requires that notes received in payment for stock should be recorded as a reduction to shareholders' equity (except in certain strictly defined circumstances):

> The SEC requires that public companies report notes received in payment for the enterprise's stock as a deduction from shareholders' equity. Task force members confirmed the predominant practice is to offset the notes and stock in the equity section. However, such notes may be recorded as an asset if collected in cash prior to issuance of the financial statements.

83. In the second quarter of 2000 and the first quarter of 2001, Enron issued $1.2 billion of stock in exchange for a note receivable to capitalize entities known as Raptor I – IV. Although GAAP required that such notes be recorded and disclosed as a reduction to shareholders' equity, Enron instead recorded the notes receivable as an asset. Enron has admitted that this treatment was improper, and has restated the December 31, 2000 annual financial statements to reduce shareholders' equity by $172,000,000, and restated the first and second quarters of 2001 to reduce shareholders' equity by $1,000,000,000 as a result of this improper treatment.

4. Enron's Failure to Make Proposed Audit Adjustments

84. Enron admitted its failure to make audit adjustments proposed by its auditors under the theory that such adjustments were "immaterial." In each year, the proposed audit adjustments were downward adjustments and disregarded by Enron as being "immaterial." Specifically, Enron maintains that a proposed $51 million downward adjustment to net income in 1997 was "immaterial" despite it being 48% of net income for the year. This is possibly the result of numerous proposed adjustments, with each of them individually being immaterial that totaled to the $51 million adjustment described above. But Enron was required by SEC Staff Accounting Bulletin No. 99 to judge the materiality of all proposed audit adjustments in the aggregate rather than individually:

> Even though a misstatement of an individual amount may not cause the financial statements taken as a whole to be materially misstated, it may nonetheless, when aggregated with other misstatements, render the financial statements, when taken as a whole to be materially misleading. Registrants and auditors of their financial statements accordingly should consider the effect of the misstatements on subtotals or totals. The auditor should aggregate all misstatements that affect each subtotal or total and consider whether the misstatements in the aggregate affect the subtotal or total in a way that causes the Registrant's financial statements as a whole to be materially misleading.

Proposed audit adjustments that were rejected by Enron as being "immaterial" from 1997 through 2000 and reclassifications had the effect of overstating net income and shareholders' equity in the following amounts:

	1997	1998	1999	2000
Net Income	$51,000,000	$6,000,000	$10,000,000	$38,000,000
Shareholders' Equity	51,000,000	57,000,000	136,000,000	255,000,000

These amounts are plainly material in the aggregate.

5. Restatement of Interim Results Demonstrates Contemporaneous Knowledge or Reckless Disregard of Their Previous Falsity

85. The fact that Enron was forced to restate each and every one of its annual financial statements for the periods ending December 31, 1997 through December 31, 2000 and its quarterly financial statements for the periods ending March 31, 2001 and June 30, 2001 conclusively demonstrates that: 1) the financial statements were false and misleading <u>at the time they were issued</u>; and 2) the misstatements were material.

86. The relevant authoritative pronouncement regarding accounting changes is APB No. 20, which provides that changes in accounting estimates or knowledge gained subsequent to the issuance of financial statements does not require a restatement of previously issued financial statements:

> Errors in financial statements result from mathematical mistakes, mistakes in the application of accounting principles, or oversight or misuse of facts <u>that existed at the time the financial statements were prepared</u>. In contrast, a change in accounting estimate results from new information or subsequent developments and accordingly from better insight or improved judgment. Thus, an error is distinguishable from a change in estimate. (emphasis added). [APB No. 20 ¶ 13]

The Board determined that a change in accounting estimate would not require a restatement of previously reported results, but an error would require such a restatement:

> A change in estimate should not be accounted for by restating amounts reported in the financial statements or prior periods . . . [APB No. 20 ¶ 31].

* * *

> The Board concludes that correction of an error in the financial statements of a prior period discovered subsequent to their issuance should be reported as a prior period adjustment. [APB No. 20 ¶ 36].

Similarly, APB No. 28 provides that changes in accounting estimates do not provide a basis for restatement of interim financial statements:

> No restatement of previously reported interim information should be made for changes in estimates . . . [APB No. 28 ¶ 26]

Thus, the improperly recognized expenses could not have been the result of new information coming to light subsequent to the issuance of the quarterly financial statements. It necessarily occurred <u>because of an error or fact that was known at the time the financial statements were issued</u>. In short, the financial statements were false and misleading when issued.

87. The materiality of the misstatements is also proven by the fact that the financial statements must be restated. APB No. 20 also addresses this issue conclusively:

> If a change or correction has a material effect on income before extraordinary items or on net income of the current period before the effect of the change, the treatments and disclosures described in this Opinion should be followed. [APB No. 20 ¶ 38].

Thus, only material errors need be restated, demonstrating that the falsifications contained in the year 1997 – 2000 annual financial statements and the quarterly statements for the quarters ended March 31, 2001 and June 30, 2001 were material.

DEFENDANTS BREACHED THEIR FIDUCIARY DUTIES

88. ERISA section 404(a)(1))(A) imposes on a Plan fiduciary a duty of loyalty – that is, a duty to "discharge his duties with respect to a Plan solely in the interest of the participants and beneficiaries and ... for the exclusive purpose of ... providing benefits to participants and their beneficiaries...." Section 404(a)(1))(B) also imposes on a Plan fiduciary a duty of prudence – that is, a duty to "discharge his duties with respect to a Plan solely in the interest of the participants and beneficiaries and ... with the care, skill, prudence, and diligence under the circumstances then

prevailing that a prudent man, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims...."

89. A Plan fiduciary's duties of loyalty and prudence include a duty to disclose and inform. This duty entails: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries. This duty to disclose and inform recognizes the disparity that may exist, and in this case did exist, between the training and knowledge of the fiduciaries, on the one hand, and the participants and beneficiaries, on the other. In a Plan with various funds available for investment, this duty to inform and disclose also includes: (1) the duty to impart to Plan participants material information of which the fiduciary has or should have knowledge that is sufficient to apprise the average Plan participant of the risks associated with investing in any particular fund; and (2) the duty not to make material misrepresentations.

90. During the Class Period and before, the defendants breached their fiduciary duties to disclose and inform with respect to the Savings Plan's use of employer stock as a Plan investment. From the beginning of the Class Period and before, any investment in employer stock in the Savings Plan was an undiversified investment in a single company's stock whose public price was based on expectations of continued rapid growth. As a result, any such investment carried with it an inherently high degree of risk. These inherent risks made the defendants' duty to provide complete and accurate information about investing in Company stock in the Savings Plan even more important that would otherwise be the case. Rather than providing complete and accurate information to the Savings Plan' participants and beneficiaries regarding the risks of investing in the Company stock fund in the Savings Plan, defendants withheld and concealed material information during the Class Period and before as set forth above, and instead actively misled the participants and beneficiaries of the Savings Plan about the Company's earnings prospects and business condition, thereby

encouraging participants and beneficiaries of the Savings Plan to continue to make and to maintain substantial investments in Company stock in the Savings Plan.

91. A fiduciary's duties of loyalty and prudence also entail a duty to conduct an independent investigation into, and continually to monitor, the merits of the investment alternatives in the Savings Plan, including employer securities, to ensure that each investment is a suitable option for the Savings Plan. During the Class Period, none of the Defendants could have reasonably made a determination that the Enron Corp. Stock Fund was a suitable investment for the Savings Plan.

92. The fiduciary duty of loyalty also entails a duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a Plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the Savings Plan sponsor.

93. Defendants breached their duty to avoid conflicts of interests and to promptly resolve them when they occur by continuing to offer Company stock as a Plan investment option during the Class Period.

94. They also breached their fiduciary duties under ERISA by proceeding with the "lock-down" of the Savings Plan participants' accounts during the period when Enron was announcing shockingly bad news about its financial reporting, which Defendants were aware would cause Enron's share price to plummet.

95. Plaintiffs further contend that the Savings Plan suffered a loss, and plaintiffs and the other class members were damaged, by defendants' above-described conduct during the Class Period because that conduct fundamentally deceived plaintiffs and the other class members about the prudence of making and maintaining investments in the Enron Corp. Savings Plan, and that, in making and maintaining investments in the Enron Corp. Savings Plan, plaintiffs and the other Class members relied to their detriment upon defendants' materially deceptive statements, acts and omissions.

COUNT I
LOCKDOWN
(Breaches of Fiduciary and Co-Fiduciary Duties In Violation of ERISA 29 U.S.C. §§ 1104 (a)(1)(A)-(D), 29 U.S.C. § 11050)
(Against All Defendants)

96. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if set forth fully herein. Each of the Defendants acted as a fiduciary under 29 U.S.C. § 1002(21)(A) with respect to the Lockdown, which was an action that was directed at and directly impacted the Savings Plan and the beneficiaries of the Savings Plan.

97. As fiduciaries, pursuant to 29 U.S.C. § 1104(a), each Defendant was required to:

> [D]ischarge his duties with respect to a Plan solely in the interest of the participants and beneficiaries and —
>
> (A) for the exclusive purpose of
>
> (i) providing benefits to participants and their beneficiaries; . . . .
>
> (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; . . . .
>
> (D) in accordance with the documents and instruments governing the Savings Plan insofar as such documents and instruments are consistent with the provisions of this title and Title IV.

98. Each of the Defendants was also a co-fiduciary of the other Defendants. 29 U.S.C. § 1105. Under that section, each fiduciary is liable for the acts of another fiduciary:

> (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;
>
> (2) if, by his failure to comply with section 404(a)(1) [29 USC § 1104(a)(1)] in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

> (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

99. All Defendants breached the fiduciary duties they owed Plaintiffs, the Class and the Savings Plan by proceeding with a Lockdown of the Savings Plan in October and November of 2001. The Lockdown period began shortly after news of Enron's massive fraud began to become public.

100. As a result of the Lockdown, Class Members were unable to sell their Enron stock during this crucial period of time in which the stock dropped precipitously.

101. In light of the extraordinary circumstances in which the Defendants knew or should have known that Enron (and its over-valued stock) were on the brink of collapse, the Defendants had a fiduciary duty to postpone the Lockdown period to allow Plan participants and beneficiaries to sell off their Enron stock.

102. In addition, the Defendants also had a fiduciary duty to provide timely, advance notice of the Lockdown. Many Class Members received no advance notice, and only learned about the Lockdown when they unsuccessfully attempted to sell their Enron stock during the Lockdown period.

103. Each Defendant knowingly participated in these fiduciary breaches of its co-fiduciaries, enabled its co-fiduciaries to commit such fiduciary breaches by its own failure to comply with the provisions of 29 U.S.C. § 1104(a), and had knowledge of the breaches of its co-fiduciaries and failed to make reasonable efforts to remedy such breaches.

104. The above-described breaches of fiduciary duty give rise to the presumption that, but for the breaches of fiduciary duty, the participants and beneficiaries in the Savings Plan would not have maintained their investments in Enron and would have instead moved their Plan assets to the most profitable alternative investment available. This remedy will restore the values of the Savings Plan's assets to what they would have been if the Savings Plan had been properly administered.

105. As a direct and proximate result of proceeding with the Lockdown in violation of ERISA as described above, the Plaintiffs, the Savings Plan and the Class lost hundreds of millions of dollars.

106. Pursuant to 29 U.S.C. § 1132(a)(2) and 29 U.S.C. § 1109(a), Defendants are liable to restore the losses to the Savings Plan caused by the Lockdown that occurred in violation of the Defendants' fiduciary duties.

COUNT II
WRONGFULLY PROMOTING THE PURCHASE OF ENRON STOCK
(Breaches of Fiduciary and Co-Fiduciary Duties In Violation of ERISA 29 U.S.C. §§ 1104 (a)(1)(A)-(D), 29 U.S.C. § 11050)
(Against All The Enron Defendants)

107. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if set forth fully herein.

108. Each of the Enron Defendants acted as a fiduciary under 29 U.S.C. § 1002(21)(A) with respect to the wrongful promotion of Enron stock by Plan participants and beneficiaries, which was an action that was directed at and directly impacted the Savings Plan and the beneficiaries of the Savings Plan.

109. Each of the Enron Defendants was also a co-fiduciary of the other Defendants under 29 U.S.C. § 1105 with respect to the wrongful promotion of Enron stock by Plan participants and beneficiaries, which was an action that was directed at and directly impacted the Savings Plan and the beneficiaries of the Savings Plan.

110. In addition to their other fiduciary duties, ERISA fiduciaries also have a duty not to mislead participants and a duty to voluntarily disclose truthful information in order to ensure that participants have all the information they need to exercise their rights under the Savings Plan.

111. The Enron Defendants repeatedly breached the fiduciary duties they owed Plaintiffs, the Class and the Savings Plan when they (i) offered Enron stock as an investment option for employee-contributions to the Savings Plan; (ii) encouraged and induced employees to invest their

Plan contributions in Enron stock and (iii) misrepresented that the stock was "under-valued" and that the prospects of Enron were bright – all at a time when the Enron Defendants knew or should have known that Enron's high stock price was built on massive fraud and that Enron stock was not a prudent investment.

112. Each of the Enron Defendants knowingly participated in these fiduciary breaches of its co-fiduciaries, enabled its co-fiduciaries to commit such fiduciary breaches by its own failure to comply with the provisions of 29 U.S.C. § 1104(a), and had knowledge of the breaches of its co-fiduciaries and failed to make reasonable efforts to remedy such breaches.

113. The above-described breaches of fiduciary duty give rise to the presumption that, but for the breaches of fiduciary duty, the participants and beneficiaries in the Savings Plan would not have maintained their investments in Enron and would have instead moved their Plan assets to the most profitable alternative investment available.

114. As a direct and proximate result of proceeding with the Lockdown in violation of ERISA as described above, the Plaintiffs, the Savings Plan and the Class lost hundreds of millions of dollars.

115. Pursuant to 29 U.S.C. § 1132(a)(2) and 29 U.S.C. § 1109(a), Defendants are liable to restore the losses to the Savings Plan caused by the Lockdown that occurred in violation of the Defendants' fiduciary duties.

COUNT III
USING ENRON STOCK FOR MATCHING CONTRIBUTIONS
(Breaches of Fiduciary and Co-Fiduciary Duties In Violation Of ERISA, 29 U.S.C. §§ 1104 (a)(1)(A)-(D), 29 U.S.C. § 11050)
(Against All The Enron Defendants)

116. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if set forth fully herein.

117. Each of the Enron Defendants acted as a fiduciary under 29 U.S.C. § 1002(21)(A) with respect to the wrongful use of Enron stock for matching contributions to Plan participants and

beneficiaries, which was an action that was directed at and directly impacted the Savings Plan and the beneficiaries of the Savings Plan.

118. Each of the Enron Defendants was also a co-fiduciary of the other Defendants under 29 U.S.C. § 1105 with respect to the wrongful use of Enron stock for matching contributions to Plan participants and beneficiaries, which was an action that was directed at and directly impacted the Savings Plan and the beneficiaries of the Savings Plan.

119. The Enron Defendants repeatedly breached the fiduciary duties they owed Plaintiffs, the Class and the Savings Plan by making their employer contributions in the form of Enron stock when they knew or should have known that Enron's high stock price was built on massive fraud and that Enron stock was not a prudent investment.

120. The Enron Defendants compounded their fiduciary breaches by forcing Plan participants who had not yet reached the age of 50 to maintain their employer contributions in the form of Enron stock throughout the Class period.

121. Regardless of what the Savings Plan said, throughout the Class Period the Enron Defendants had a duty under 29 U.S.C. § 1104(a)(D) to (i) cease making their contributions in the form of Enron stock and (ii) allow all Plan participants to sell the Enron stock that they had received as Enron's employer contributions.

122. Each of the Enron Defendants knowingly participated in these fiduciary breaches of its co-fiduciaries, enabled its co-fiduciaries to commit such fiduciary breaches by its own failure to comply with the provisions of 29 U.S.C. § 1104(a), and had knowledge of the breaches of its co-fiduciaries and failed to make reasonable efforts to remedy such breaches.

123. Additionally, because it was a party in interest to the Savings Plan within the meaning of 29 U.S.C. § 1132(a)(3), Enron also had a separate duty under 29 U.S.C. § 1132(a)(3) to refrain from participating in any breaches of fiduciary duty with respect to the Savings Plan when, as here, it had actual or constructive knowledge of such breaches.

124. The above-described breaches of fiduciary duty give rise to the presumption that, but for the breaches of fiduciary duty, the participants and beneficiaries in the Savings Plan would not have maintained their investments in Enron and would have instead moved their Plan assets to the most profitable alternative investment available.

125. As a direct and proximate result of in violation of ERISA as described above, the Plaintiffs, the Savings Plan and the Class lost hundreds of millions of dollars.

126. Pursuant to 29 U.S.C. § 1132(a)(2) and 29 U.S.C. § 1109(a), Defendants are liable to restore the losses to the Savings Plan caused by the Enron Defendants' breach of fiduciary duties as detailed above.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief as follows:

A. That this Court certify this action as a class action under Rule 23(b)(1), 23(b)(2) and 23(b)(3);

B. That this Court declare that Defendants have violated the duties, responsibilities and obligations imposed upon it as a fiduciary by ERISA;

C. That this Court order defendants to restore to the Enron Corp. Savings Plan on behalf of each member of the Class the amount of overpayment made for the purchase of Enron stock, plus interest;

D. That this Court order defendants to reimburse the Savings Plan and each member of the Class for all damages occurring during the "lock-down" period and to award damages related to purchases made during the Class Period or to rescind the purchases of Enron Stock made by the Savings Plan and each member of the Class;

E. That this Court award to plaintiffs reasonable costs and attorneys' fees; and

F. That this Court grant such other relief as may be just and proper.

DATED this 25 day of January, 2002

RESPECTFULLY SUBMITTED

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